

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PATRICIA F. TITUS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,031,642
<b>USD 229</b>	)	
Self-Insured Respondent	)	

**ORDER**

Claimant appealed the July 23, 2007, Award entered by Administrative Law Judge Kenneth J. Hursh. The Workers Compensation Board heard oral argument on November 6, 2007.

**APPEARANCES**

James E. Martin of Overland Park, Kansas, appeared for claimant. Christopher J. McCurdy of Overland Park, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for an April 26, 2005, accident and the resulting right leg injury. In the July 23, 2007, Award, Judge Hursh adopted the functional impairment opinions provided by Dr. David J. Clymer and found that claimant now has a 40 percent impairment to her right leg. Moreover, the Judge also found claimant had a 25 percent impairment to her leg before her April 2005 accident. Accordingly, after subtracting 25 percent for preexisting impairment from the 40 percent functional impairment rating, the Judge awarded claimant permanent disability benefits for the resulting 15 percent functional impairment to the leg. Judge Hursh denied claimant's request for temporary total disability benefits from June 28, 2006, through September 28, 2006, less one week, because claimant received her salary during that time period and, therefore, the Judge concluded she was engaged in employment and not temporarily and totally disabled under K.S.A. 44-510c.

Claimant contends Judge Hursh erred. Claimant argues she is entitled to receive permanent disability benefits for a 45 percent functional impairment (which is the rating provided by claimant's medical expert, Dr. Edward J. Prostic) or, in the alternative, a 42.5 percent functional impairment (an average of Dr. Prostic's 45 percent rating with the 40 percent rating from Dr. Clymer, respondent's medical expert).

In addition, claimant contends the Judge erred by reducing her award for preexisting functional impairment to her right leg because Dr. Clymer's opinions lack foundation. Moreover, claimant argues her right knee was replaced and, therefore, the preexisting condition in her knee no longer exists and does not contribute to her present impairment.

Finally, claimant contends she is entitled to receive temporary total disability benefits for the period from June 28, 2006, through September 28, 2006, less one week worked in August, as she was unable to work during that time period. She also contends that temporary total disability benefits should not be deducted from the maximum number of weeks in computing the award of permanent disability benefits. Claimant argues those weeks of benefits should not be considered or deducted in determining the number of weeks of permanent disability benefits she should be awarded. Accordingly, claimant requests the Board to modify the July 23, 2007, Award.

Conversely, respondent argues the Judge properly reduced claimant's award by the 25 percent preexisting functional impairment to her right leg. In addition, respondent argues the Board should disregard Dr. Prostic's opinions regarding functional impairment as the doctor could not locate the scoring he used in rating claimant under the *AMA Guides*<sup>1</sup> and the doctor failed to recognize claimant's significant amount of preexisting impairment. Finally, respondent argues that because claimant elected to receive her salary over a 12-month period, she was continuing to receive wages for the time that she was not working due to her knee injury, which disqualifies her from receiving the temporary total disability benefits in question.<sup>2</sup>

The issues before the Board on this appeal are:

1. Is claimant precluded from receiving temporary total disability benefits for the period from June 28, 2006, through September 28, 2006, excluding one week, because during that period she received installment payments of the salary she had earned for the concluded 2005-2006 school year?

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<sup>1</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*.

<sup>2</sup> In its brief to this Board, respondent also argued claimant failed to prove her knee replacement was caused by her April 26, 2005, accident. At oral argument, however, respondent abandoned that contention.

2. What is the extent of claimant's functional impairment and disability?
3. Should claimant's award be reduced because of any preexisting functional impairment?
4. When computing the weeks of permanent partial disability benefits an injured worker is entitled to receive for an injury listed in the schedule of K.S.A. 44-510d, are the weeks of temporary total disability benefits deducted from the number of weeks provided in the schedule of K.S.A. 44-510d?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

Claimant fell on April 26, 2005, and fractured the fibula in her right leg. Respondent stipulates that claimant's accident arose out of and in the course of her employment as a school nurse.

In the July 23, 2007, Award, Judge Hursh determined the April 26, 2005, accident aggravated, exacerbated, and accelerated the preexisting osteoarthritis in claimant's right knee. Accordingly, the Judge found respondent liable for the medical treatment claimant received for her right knee and the additional impairment claimant sustained due to her knee replacement.

The records from Dr. Scott M. Cook, who initially treated claimant's fibula fracture and who also performed the right knee replacement, indicate claimant's April 2005 accident aggravated the arthritis in her knee. And Dr. David J. Clymer, who examined claimant in April 2007 at respondent's request, also concluded claimant's April 2005 fall aggravated the osteoarthritis in claimant's right knee and accelerated the need for the knee replacement.<sup>3</sup> Finally, claimant's medical expert, Dr. Edward J. Prostic, testified claimant's April 2005 accident aggravated her underlying arthritis and accelerated the need for knee replacement surgery.<sup>4</sup>

An injury is compensable under the Workers Compensation Act even when an accident at work only serves to aggravate a preexisting condition.<sup>5</sup> The test is not whether

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<sup>3</sup> Clymer Depo. at 20.

<sup>4</sup> Prostic Depo. at 11.

<sup>5</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

the accident caused a condition but, instead, the test is whether the accident aggravated or accelerated a preexisting condition.<sup>6</sup>

The evidence establishes that claimant's April 2005 accident aggravated the preexisting arthritis in claimant's right knee resulting in her knee replacement. Accordingly, the Board affirms the Judge's conclusion that claimant's right knee replacement was directly related to her April 26, 2005, accident.

- 1. Is claimant precluded from receiving temporary total disability benefits for the period from June 28, 2006, through September 28, 2006, excluding one week, because during that period she received installment payments of the salary she had earned for the 2005-2006 school year, which had previously concluded?**

Claimant underwent right knee replacement on June 28, 2006. She now requests temporary total disability benefits for the period of time she was unable to work following that surgery. Respondent contends it is not required to pay claimant temporary total disability benefits for the period in question as claimant had elected to receive her pay over a 12-month period and, therefore, claimant received her salary for the period in question.

The parties stipulated into evidence the contract respondent and claimant entered into for the 2005-2006 school year. The contract, which is dated August 22, 2005, provides that claimant would work for respondent during the 2005-2006 school year. In return, respondent agreed it would pay claimant's salary in 24 equal installments commencing September 15, 2005, payable on the middle and last day of each month.

Claimant's testimony is uncontradicted she could have elected to receive her salary over a nine-month period rather than over 12 months. Likewise, her testimony is uncontradicted she only worked nine months during the school year and that her contract with respondent expired June 1, 2006, which was her last day of work.<sup>7</sup>

Q. (Mr. McCurdy) Other than the 15 days of paid leave that you got, did you receive a paycheck after June 28th?

A. (Claimant) Well, I guess I don't understand the situation. I got paychecks from the previous year. I could have not got a paycheck if I had [received] my paychecks into a nine-month payment.

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<sup>6</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>7</sup> Titus Depo. at 21.

Q. But you weren't, you were a full year salaried employee?

**A. Well, I only work nine months.**

Q. But you received wages for the whole 12 months?

A. Yes.

**Q. So when does your contract expire then? What is your term?**

**A. Well, that year it was June 1st. That was my last day of work.<sup>8</sup>**

Claimant also indicated that, except for one week, she was off work from the date of her knee replacement surgery on June 28, 2006, through September 28, 2006. On October 25, 2006, Dr. Cook released claimant to return to work. Claimant is limiting her request for temporary total disability benefits through September 28, 2006, as she underwent unrelated surgery on September 29, 2006. Claimant also testified that during the period in question she received about 15 days of paid leave.<sup>9</sup> According to claimant the only other pay she received from respondent during the period in question was her salary for the 2005-2006 school year.

There is little question claimant was recuperating from knee surgery from June 28, 2006, through September 28, 2006. Indeed, at oral argument before the Board, respondent indicated it was not challenging that claimant was unable to work during the period in question. There is also little question that the salary claimant received during that period was in the nature of deferred salary that claimant had previously earned for working the 2005-2006 school year, which ended on June 1, 2006. Truly, the only question regarding claimant's entitlement to the requested temporary total disability benefits is the effect of claimant's receipt of those deferred salary payments. And the answer to that question lies in K.S.A. 44-510c and K.S.A. 44-510f(b), which provide:

Where temporary total disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510h and 44-510i and amendments thereto, unless the temporary total disability exists for three consecutive weeks, in which case compensation shall be paid for the first week of such disability. Thereafter weekly payments shall be made during such temporary total disability . . . .<sup>10</sup>

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<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *Id.* at 11.

<sup>10</sup> K.S.A. 44-510c(b)(1).

Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. . . .<sup>11</sup>

If an employer shall **voluntarily** pay **unearned** wages to an employee **in addition to and in excess of any amount of disability benefits to which the employee is entitled** under the workers compensation act, **the excess amount paid shall be allowed as a credit to the employer in any final lump-sum settlement, or may be withheld from the employee's wages** in weekly amounts the same as the weekly amount or amounts paid in excess of compensation due, but not until and unless the employee's average gross weekly wage for the calendar year exceeds 125% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto. The provisions of **this subsection shall not apply to any employer who pays any such unearned wages to an employee pursuant to an agreement** between the employer and employee or labor organization to which the employee belongs.<sup>12</sup> (Emphasis added.)

Clearly, K.S.A. 44-510c does not relieve an employer from providing temporary total disability benefits to an injured worker because the worker is receiving payments of deferred salary. And K.S.A. 44-510f sets forth how an employer may receive a credit for the payment of wages during the period in which a worker is temporarily disabled.

Based upon the above statutes, respondent's request to be relieved of providing temporary total disability benefits because it paid claimant deferred salary during the period that she was unable to work must be denied. The Workers Compensation Act does not provide that the payment of salary relieves an employer from providing temporary total disability benefits. Instead, the Act provides that an employer may seek a credit or reimbursement for the payment of *unearned* wages as provided in K.S.A. 44-510f(b).

But in this instance, respondent is not entitled to the relief provided by K.S.A. 44-510f(b). First, there is no showing the payments to claimant were either unearned or were made voluntarily. Conversely, the evidence establishes the salary was earned as it was paid for the work claimant previously performed. And the payments were not voluntary as they were made pursuant to claimant's contract of employment with respondent. Second, K.S.A. 44-510f(b) limits any credit for unearned wages to a lump-sum settlement. The only other method to recoup excess unearned wages under the Workers Compensation Act is through wage withholding. And neither of those situations apply. In short, there is no provision of the Act that supports respondent's contention that it is

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<sup>11</sup> K.S.A. 44-510c(b)(2).

<sup>12</sup> K.S.A. 44-510f(b).

relieved from its responsibility under the Workers Compensation Act to provide temporary total disability benefits to claimant for the period in question.

Based upon the above, the Board concludes that claimant is entitled to receive temporary total disability benefits for the period from June 28, 2006, through September 28, 2006, less one week.

## **2. What is the extent of claimant's functional impairment and disability?**

At the time of the April 2007 regular hearing, claimant was continuing to experience right leg symptoms, which she described as pain radiating down the side of her leg, swelling in her knee, and limited range of motion in the knee. At that time, claimant noticed increased symptoms from standing and walking, and problems climbing stairs. Before her April 2005 accident, claimant was able to squat, kneel, and run.

The record contains two expert medical opinions concerning the extent of claimant's present functional impairment. Dr. Clymer, who is a board-certified orthopedic surgeon and who was selected by respondent to evaluate claimant, testified claimant sustained a 40 percent functional impairment to her right leg as measured by the *AMA Guides*.<sup>13</sup> Dr. Clymer determined claimant had a good result from her total right knee replacement, which gave claimant a 37 percent impairment. In addition, the doctor gave claimant an additional three percent for the fibula fracture she sustained in the April 2005 accident. Finally, after reviewing claimant's past medical records Dr. Clymer felt claimant had a 25 percent impairment to her right leg before the April 2005 accident.<sup>14</sup> Regarding the preexisting impairment rating, Dr. Clymer testified, in part:

The guides are [a] little bit sparse in the ability to retrospectively assess impairment, but there are some areas of assistance.

One is a table that discusses radiographic appearance of joints with cartilage loss and in her case she has previous X-rays and MRIs that describe severe -- moderate to severe degenerative change with cartilage surface loss. When taking that into account and looking at the radiographic guides, my feeling is that she had [a] significantly arthritic knee.

On the other hand, her subjective symptoms were not too bad. She was functioning rather well and had not required a lot of medical attention at least in the

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<sup>13</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

<sup>14</sup> Clymer Depo. at 17.

year or so prior to this new event.

So I think then it becomes a matter of clinical judgment and balance to weigh the magnitude of those radiographic findings and her previous surgeries and statements from previous physicians with regard to severity of those problems versus a retrospective look at her subjective complaints.<sup>15</sup>

According to Dr. Clymer, claimant had a preexisting lateral meniscus tear and arthroscopic lateral meniscectomy, degenerative chondromalacia problems that resulted in a valgus malalignment of the knee, and severe degenerative chondromalacia in the lateral compartment with moderate degenerative chondromalacia in the medial and patella femoral compartments.<sup>16</sup> The doctor also believed claimant would have eventually needed a total right knee replacement regardless of her April 2005 accident.

Claimant was not impressed with Dr. Clymer's examination. Claimant testified she waited for 45 minutes before the doctor saw her. And then the doctor provided only a cursory exam in which the doctor had claimant extend her leg while he moved it side to side. Claimant asserts Dr. Clymer admitted he had not reviewed her records and he was flipping through them in the examination room.

Dr. Edward J. Prostic testified on behalf of claimant. The doctor, who examined claimant in December 2006, determined claimant had a 45 percent functional impairment to her right leg as measured by the *AMA Guides*. In short, the doctor felt claimant's knee replacement results fell between good and fair. But if he had to choose between a 37 percent impairment for a good result or a 50 percent impairment for a fair result under the *Guides*, he believed claimant's condition was closer to fair than good and, therefore, would justify a 50 percent rating.

Dr. Prostic did not provide an opinion regarding the extent of any preexisting functional impairment. And he admitted he did not have claimant's prior medical records for his review and that he did not know what kind of knee operations she had undergone before her April 2005 accident or that she had undergone Synvisc injections in 2004.

Judge Hursh found claimant sustained a 40 percent impairment to her right leg. The Board agrees. That rating is supported by Dr. Clymer's testimony. And although Dr. Clymer's examination may raise some questions, it appears the examination was sufficient to provide a rating under the *Guides*, which appears to be a relatively simple process. Dr. Prostic indicated claimant's knee replacement fell somewhere between a

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<sup>15</sup> *Id.* at 12, 13.

<sup>16</sup> *Id.* at 32.



good and fair result. Dr. Prostic also acknowledged that the *Guides* do not provide a range for rating the impairment related to a knee replacement. Consequently, the Board affirms Judge Hursh's finding that claimant has sustained a 40 percent impairment to her right lower extremity due to her April 2005 accident and resulting knee replacement.

**3. Should claimant's award be reduced because of any preexisting impairment?**

Claimant has a history of right knee problems. In 1967, when claimant was 15, she had an open right knee surgery to remove torn meniscus. In 1973, claimant underwent right knee surgery for removal of floating cartilage. And in 1981, claimant had a third right knee procedure in which the surgeon arthroscopically smoothed the joint. Later claimant received Synvisc injections in her knee for arthritic pain. Indeed, claimant's physician, Dr. Jon E. Browne, had advised her that she would eventually need a knee replacement. Consequently, before the April 2005 accident claimant was experiencing mild pain in her right knee and hoping she could wait 10 years before replacing her knee.

When a preexisting condition is aggravated, an injured worker's award shall be reduced by the amount of preexisting functional impairment. K.S.A. 44-501(c) provides:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

Claimant argues her award should not be reduced as her knee was replaced and, therefore, the preexisting condition is no longer present and does not contribute to the present impairment rating. The Board, however, disagrees.

Claimant had several right knee surgeries before her April 2005 accident. And she had ongoing symptoms with that knee. Indeed, claimant was hoping she could wait several more years before she would undergo a right knee replacement. The Board finds it is more probably true than not that claimant had a functional impairment in her knee before the April 2005 accident. Dr. Clymer offered the only opinion regarding the extent of that functional impairment, which the Judge adopted. The Board affirms that finding. Accordingly, before the April 2005 accident claimant had a 25 percent impairment to her right leg.

The Board also agrees with Judge Hursh that claimant's award should be reduced by the preexisting 25 percent functional impairment, leaving claimant with an award for a 15 percent permanent disability to the leg.

Although it is true claimant's preexisting condition no longer exists, the above-

quoted statute is applicable and limits claimant's recovery to only the amount of increased impairment that she sustained by reason of her April 2005 accident. Claimant concedes her work-related accident aggravated the preexisting arthritis in her knee, which resulted in her knee replacement. Under these circumstances, claimant's award for a 40 percent functional impairment to her leg should be reduced by the preexisting 25 percent functional impairment, leaving 15 percent.

Claimant also argued that her award should not be reduced by the amount of preexisting functional impairment as respondent failed to raise that as an issue. The Board believes that preexisting functional impairment is part and parcel of the issue regarding the nature and extent of claimant's impairment. Accordingly, claimant's argument in this respect must fail.

**4. When computing the weeks of permanent partial disability benefits an injured worker is entitled to receive for an injury listed in the schedule of K.S.A. 44-510d, are the weeks of temporary total disability benefits deducted from the number of weeks provided in the schedule of K.S.A. 44-510d?**

Claimant argues any temporary total disability benefits that she is entitled to receive should not be deducted when determining her permanent partial disability benefits. The Board disagrees.

The schedule of K.S.A. 44-510d provides that a worker is entitled to no more than 200 weeks of permanent disability benefits for the loss of a leg. But that statute does not address how temporary total disability benefits figure into the computation. Indeed, the Act is silent. Consequently, K.A.R. 51-7-8 was adopted and it provides:

(a)(1) If a worker suffers a loss to a member and, in addition, suffers other injuries contributing to the temporary total disability, compensation for the temporary total disability shall not be deductible from the scheduled amount for those weeks of temporary total disability attributable to the other injuries.

(2) The weekly compensation rate for temporary total compensation shall be computed by multiplying .6667 times the worker's gross average weekly wage. This figure shall be subject to the statutory maximum set in K.S.A. 44-510c.

(b) If a healing period of 10% of the schedule or partial schedule is granted, not exceeding 15 weeks, it shall be added to the weeks on the schedule or partial schedule before the following computations are made.

(1) If a loss of use occurs to a scheduled member of the body, compensation shall be computed as follows:

(A) deduct the number of weeks of temporary total compensation from the schedule;

(B) multiply the difference by the percent of loss or use to the member; and

(C) multiply the result by the applicable weekly temporary total

compensation rate.

(2) If part of a finger, thumb, or toe is amputated, compensation shall be calculated as follows:

(A) multiply the percent of loss, as governed by K.S.A. 1996 Supp. 44-510d, as amended, by the number of weeks on the full schedule for that member;

(B) deduct the temporary total compensation; and

(C) multiply the remainder by the weekly temporary total compensation rate.

(3) If a scheduled member other than a part of a finger, thumb, or toe is amputated, compensation shall be computed by multiplying the number of weeks on the schedule by the worker's weekly temporary total compensation rate. The temporary total compensation previously paid shall be deducted from the total amount allowed for the member.

(c)(1) An injury involving the metacarpals shall be considered an injury to the hand. An injury involving the metatarsals shall be considered an injury to the foot.

(2) If the injury results in loss of use of one or more fingers and also a loss of use of the hand, the compensation payable for the injury shall be on the schedule for the hand. Any percentage of permanent partial loss of use of the hand shall be at least sufficient to equal the compensation payable for the injuries to the finger or fingers alone.

(3) An injury involving the hip joint shall be computed on the basis of a disability to the body as a whole.

(4) An injury at the joint on a scheduled member shall be considered a loss to the next higher schedule.

(5) If the tip of a finger, thumb, or toe is amputated, the amputation does not go through the bone, and it is determined that a disability exists, the disability rating shall be based on a computation of a partial loss of use of the entire finger. (Authorized by K.S.A. 1996 Supp. 44-510d and K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-510d; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended May 22, 1998.)

Although the regulation somewhat lacks clarity regarding when it applies, it does indicate that the weeks of temporary total disability benefits are to be deducted from the maximum number of weeks provided in the schedule before multiplying by the functional impairment rating to obtain the number of weeks of permanent disability benefits due the injured worker.

There is no question, however, the Director of Workers Compensation may adopt the rules and regulations that are necessary for administering the Workers Compensation Act. The Act provides:

The director of workers compensation may adopt and promulgate such rules and regulations as the director deems necessary for the purposes of administering and

enforcing the provisions of the workers compensation act. . . . All such rules and regulations shall be filed in the office of the secretary of state as provided by article 4 of chapter 77 of the Kansas Statutes Annotated and amendments thereto.<sup>17</sup>

And administrative regulations that are adopted pursuant to statutory authority for the purpose of carrying out the declared legislative policy have the force and effect of law.<sup>18</sup>

“Rules or regulations of an administrative agency, to be valid, must be within the statutory authority conferred upon the agency. Those rules or regulations that go beyond the authority authorized, which violate the statute, or are inconsistent with the statutory power of the agency have been found void. Administrative rules and regulations to be valid must be appropriate, reasonable and not inconsistent with the law.” *Pork Motel, Corp. v. Kansas Dept. of Health & Environment*, 234 Kan. 374, Syl. ¶ 1, 673 P.2d 1126 (1983).<sup>19</sup>

Administrative agencies are generally required to follow their own regulations and failure to do so results in an unlawful action.<sup>20</sup>

Consequently, claimant’s award of permanent partial disability benefits must be computed after reducing the maximum 200 weeks by the temporary total disability weeks.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>21</sup> Accordingly, the findings and conclusions set forth above reflect the majority’s decision and the signatures below attest that this decision is that of the majority.

### **AWARD**

**WHEREFORE**, the Board modifies the July 23, 2007, Award entered by Judge Hursh.

Patricia F. Titus is granted compensation from USD 229 for an April 26, 2005,

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<sup>17</sup> K.S.A. 44-573.

<sup>18</sup> See K.S.A. 77-425; *Harder v. Kansas Comm’n on Civil Rights*, 225 Kan. 556, Syl. ¶ 1, 592 P.2d 456 (1979); *Vandever v. Kansas Dept. of Revenue*, 243 Kan. 693, Syl. ¶ 1, 763 P.2d 317 (1988).

<sup>19</sup> *State v. Pierce*, 246 Kan. 183, 189, 787 P.2d 1189 (1990).

<sup>20</sup> *Vandever v. Kansas Dept. of Revenue*, 243 Kan. 693, Syl. ¶ 2, 763 P.2d 317 (1988).

<sup>21</sup> K.S.A. 2006 Supp. 44-555c(k).

accident and resulting disability. Ms. Titus is entitled to receive 12.29 weeks of temporary total disability benefits at \$449 per week, or \$5,518.21, plus 28.16 weeks of permanent partial disability benefits at \$449 per week, or \$12,643.84, for a 15 percent permanent partial disability, making a total award of \$18,162.05, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 2007.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James E. Martin, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent  
Kenneth J. Hursh, Administrative Law Judge